EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

August 30, 1976

MEMORANDUM FOR HEADS OF AGENCIES

SUBJECT: Analysis of Impacts on Prime and Unique Farmland in Environmental Impact Statements

This memorandum provides guidance to Federal agencies on how to carry out evaluation of the impact of major agency actions on prime and unique farmland in the course of preparing environmental impact statements (EIS).*

Paragraph 101(b)(4) of National Environmental Policy Act (NEPA) establishes a Federal policy to preserve important historic, cultural and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice. This policy should be understood to include highly productive farmlands.

Efforts should be made to assure that such farmlands are not irreversibly converted to other uses unless other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection. These benefits

* Prime farmlands are those whose value derives from their general advantage as cropland due to soil and water conditions. Unique farmlands are those whose value derives from their particular advantages for growing specialty crops.

stem from the capacity of such farmland to produce relatively more food with less erosion and with lower demands for fertilizer, energy, and other resources. In addition, the preservation of farmland in general provides the benefits of open space, protection of scenery, wildlife habitat and, in some cases, recreation opportunities and controls on urban sprawl.

As part of its policy to preserve the Nation's prime farm, range, and forest lands, the Department of Agriculture (USDA) has recently announced a general policy to establish and keep current an inventory of prime and unique farmland. Recent estimates conclude that of 1.4 billion acres of privately owned lands in the United States, approximately 275 million are classed as prime farmlands.

Federal agencies should attempt to determine the existence of prime and unique farmlands in the areas of impact analyzed in environmental impact statements prepared in compliance with Section 102(2)(C) of the NEPA. This should include threats to the continued use and viability of these farmlands not only from direct construction activities, but also from urbanization or other changes in land use that might be induced by the Federal action.

The Department of Agriculture, at its field locations throughout the country, is committed to assisting Federal agencies in the identification of prime or unique farmlands, and in nearly all cases has complete information on land areas which may be impacted. This should simplify and reduce the burden on other agencies in carrying out their impact analysis. Initial contact should be made with the USDA Land Use Committee in the state where the lands under consideration are situated. This Committee can be located by contacting either the Chairman of the USDA Rural Development Committee in the state, or any nearby USDA office. The State Land Use Committee will then help facilitate contacts with the appropriate USDA office and personnel so that all available information on prime and unique farmlands within the project area is accessible to the agency preparing an EIS.

Finally, the Department of Agriculture has agreed to place a major new emphasis on the review and evaluation of draft environmental impact statements with respect to impacts on prime and unique farmland. In undertaking these reviews, USDA will use soil, range, forest, water resource, and other surveys and information which may be applicable. This service of the Department should help improve the quality of all EISs.

Further information on where agencies may obtain assistance in identifying prime and unique farmland and analyzing significant impacts on it from agency activities can be obtained from State Soil Conservation Service (SCS) offices shown on the attachment. Information on new USDA procedures to review impact on prime and unique farmlands in draft EISs can also be obtained from these sources.

Russell W. Peterson
Chairman

Attachment

Next 2 Page(s) In Document Exempt

Approved For Release 2005/05/23 : CIA-RDP79M00467A001100100002-7

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Executive Registry
76-9963/1

FROM:
A-Director of Logistics
2C02 Page Building

EXTENSION

NO.

DD/A Registry
76-4760

DATE
21 SEP 1976

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Deputy Director for Administration	24 SEP 1976			The attached memo for Heads of Agencies gives guidelines for finding information on prime farmland that should be included in any Environmental Impact Statements (EIS that are prepared for such areas. Normally EIS's are prepared for us by other [redacted] Government agencies doing the work. STAT OL will retain a copy of the memo with other instructions on EIS preparation to insure compliance should Agency issuance of an EIS be appropriate. No other action is required at this time. [redacted] STAT Acting Director of Logistics Att
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3. Executive Secretariat 7E12 Hqs				
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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

September 16, 1976

MEMORANDUM TO HEADS OF AGENCIES ON KLEPPE V. SIERRA CLUB AND FLINT RIDGE V. SCENIC RIVERS

In June, the Supreme Court decided two cases on NEPA, Kleppe v. Sierra Club and Flint Ridge Development Co. v. Scenic Rivers Association. These are the only opinions on NEPA the Court has issued since Aberdeen and Rockfish R. Co. v. SCRAP (SCRAP II), decided last year. Moreover, these two cases -- but particularly Kleppe -- represent the first extensive interpretation of NEPA by the Supreme Court.

Last November the Council issued a memorandum to agency heads on SCRAP II, following our past practice of issuing memoranda on important court decisions and other significant NEPA issues and developments. The attached memorandum on Kleppe and Flint Ridge continues this practice, and provides briefing and analysis of these decisions in the context of the Council's Guidelines, existing case law, other sources of NEPA guidance, and agency activities.

Most of the Court's rulings deal with program environmental statements, labeled comprehensive statements by the Court: under what conditions they must be prepared, what their scope should be, and what actions can proceed before a comprehensive statement is complete. The principal points which emerge from the opinion are:

(1) comprehensive statements are necessary, among other circumstances, on coherent Federal programs and on related Federal activities or concurrent proposals with cumulative environmental impacts; and

(2) comprehensive statements should reflect consideration of future program-related activities, sequential steps or phases, or other proposals which may compound the effects of a present action.

E-15

The Court also touched on agencies' responsibilities beyond the EIS requirement. It emphasized the need for early and thorough integration of environmental factors into agencies' planning and analysis. It also said that agencies have authority and responsibility to implement NEPA in areas of activity to which the EIS requirement may not apply.

If agencies have questions concerning possible specific effects of these decisions on their activities, we recommend consulting with the Council's staff before taking action. For the Council's part, we stand ready to meet with agency officials to discuss these decisions, the Council's memo, and agencies' general approaches to NEPA implementation.

Russ Peterson

Russell W. Peterson
Chairman

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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

September 16, 1976

MEMORANDUM ON KLEPPE v. SIERRA CLUB AND FLINT RIDGE DEVELOPMENT CO. v. SCENIC RIVERS ASSN. OF OKLAHOMA

Two Supreme Court cases on NEPA were decided in late June. These opinions, issued in tandem, constitute the first extensive Supreme Court interpretation of NEPA.

KLEPPE v. SIERRA CLUB[1]

The more significant decision was the Supreme Court's reversal of the Court of Appeals for the District of Columbia in Kleppe v. Sierra Club, the Northern Great Plains case.

The Sierra Club sued the Department of the Interior and other agencies responsible for controlling the development of federal coal reserves in the West. The Sierra Club claimed that the federal defendants were taking coal-related actions (e.g., issuing coal leases, approving rights-of-way, authorizing water diversions) in a region they identified as the Northern Great Plains,[2] and that these actions were so closely related in function and in environmental effects that a program environmental impact statement was required by NEPA.

The Government claimed that there was no plan or proposal for development in the Northern Great Plains, and hence there was no action on which an EIS could be prepared. The Interior Department had undertaken a broad study of potential social, economic and environmental effects of alternative coal development scenarios in a five-state region which included the area defined by the Sierra Club. The Department had also prepared a program EIS of national scope as part of a general restructuring of Interior's coal leasing program. At the regional level, the Secretary had announced the Department's intention to prepare program statements when coal-related actions were proposed in the same river basin or other common area, and one such EIS had been prepared for mining plans in the Powder River Basin. Finally, Interior planned to prepare individual impact statements for leases or mining plans if they had not been analyzed in a regional EIS, and had prepared statements on several individual leases or mining plans. What Interior was not planning to do, however, was an EIS for coal-related actions across the area defined by the Sierra Club as the Northern Great Plains.

The District Court found there was "no existing or planned Federal program or action in the area defined by the plaintiffs as the 'Northern Great Plains regions,'"[3] and

granted judgment for the Government. On appeal, the Court of Appeals disagreed with the Sierra Club and the Government, as well as the District Court. The court held that the Federal defendants "contemplated" controlling coal development on the Northern Great Plains, and said further that attempting to control development in this region would be a major federal action if it went forward.[4] Uncertain whether or when a program statement would ultimately be required for the Northern Great Plains, however, the court remanded the case to enable the Interior Department to decide whether it would proceed with its "contemplated" attempts to control coal development on the Northern Great Plains, and if so, whether it intended to do a comprehensive EIS.

The Government then sought review by the Supreme Court, continuing to urge that no program or proposal existed for federal coal-related action on the Northern Great Plains, and hence nothing existed to do an EIS on.

The Supreme
Court's Decision

The Supreme Court reversed the Court of Appeals. The Court first reviewed the studies and the national, regional,

and individual impact statements the Department had prepared, comparing their scope with the area defined by the Sierra Club. Then, in a decision confined largely to factual issues, the Court held:

1. "[T]here is no evidence in the record of an action or a proposal for an action of regional scope [in the Northern Great Plains region defined by the plaintiffs, and] ... no evidence that the ... coal development projects undertaken or proposed ... are integrated into a plan or otherwise interrelated."[5]

2. "[T]he Court [of Appeals] was mistaken ... in concluding, on the record before it, that the petitioners [Interior Department] were 'contemplating' a regional development plan or program [in the Northern Great Plains region]."[6]

3. The decision by the Secretary of Interior not to propose a coal program or actions for the Northern Great Plains region was not arbitrary, and therefore could not be disturbed by a federal court.[7]

In short, the Supreme Court held that the Interior Department was neither acting nor contemplating acting across the Northern Great Plains region, as such, and that Interior's decision was not arbitrary. The Court based its decision on the actions of national, regional and local scope

which Interior had proposed, and on the national, regional and local impact statements which Interior had accordingly prepared or announced its intent to prepare. In this series of holdings the Court confirmed existing principles of NEPA: agencies have primary responsibility for determining the scope and timing of their actions, and courts will set aside such decisions if they are shown to be arbitrary or without a rational basis.[8]

Other Rulings
by the Court

Although the Court's decision was confined, the Court went on in its opinion to discuss NEPA's application to programmatic agency actions and the federal courts' role in reviewing such actions. This discussion provides additional guidance on NEPA, probably more so than the actual decision.

First, the Court affirmed that NEPA requires comprehensive impact statements on coherent federal programs[9] or when federal plans or proposals involve "cumulative or synergistic environmental impacts."[10] It noted the Interior Department's preparation of a national coal program EIS, and observed that the statement was legally required since the Department was planning a program of national scale.[11] Similarly, the Court noted with approval the Secretary's

plans to prepare statements on cumulative effects of related multi-agency actions in regions determined by "basin boundaries, drainage areas, areas of common reclamation problems, administrative boundaries, areas of economic interdependence, and other relevant factors."[12]

The Court's recitation that comprehensive statements are necessary for proposed programs underscores its holding in SCRAP II[13] that the scope of an EIS should be tailored to the scope of a proposed action. When a "responsible official" develops a proposal for a program, he should develop a comprehensive EIS concurrently.[14] Thus, for example, when agencies propose to develop new technologies,[15] or consider authorizing their commercial use,[16] comprehensive statements are necessary to assess the cumulative environmental effects of full development or commercialization.

The Court's "cumulative or synergistic environmental impacts" standard for comprehensive statements echoes both the Council's Guidelines and many lower court decisions.[17] In discussing otherwise independent coal leases, mining plans, and other proposed actions, the Court said:

> [W]hen several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together.[18]

This rule confirms previous guidance that the likelihood of closely related environmental effects is often enough reason to group otherwise separate actions together for comprehensive analysis.[19] For example, segments of highways,[20] components of related flood control or other water resource projects,[21] or related urban renewal projects[22] should be grouped together if cumulative effects may occur along a common corridor, in a common drainage system, or in a common community. Following SCRAP II, the "federal proposal" in these circumstances is the entire multi-phased project, not segments of it.[23]

Other typical occasions for comprehensive statements include multi-agency actions with common objectives and related impacts (such as the related mining leases, rights-of-way and water use approvals noted in Kleppe for which regional EISs would be prepared) and generically similar actions with pervasive impacts over time and area (e.g., licensing activities which affect classes of public or private action, operation and maintenance activities, grant or other financial assistance activities.)[24]

The Court's rule may also require grouping and comprehensive analysis of separate actions even if some of the individual actions have independent utility.[25] At a minimum, when agencies consider currently pending proposals which may have cumulative effects, a comprehensive statement will be needed, even though construction schedules[26] and agency sponsors of the projects may differ. Agencies which may be considering such projects may wish to consult with CEQ staff more specifically in defining the scope of impact statements for these actions.

Second, the Court remarked in a footnote that in preparing comprehensive statements, agencies need not look to "contemplated projects" or "less imminent" actions when preparing the statement.[27] The focus should be on proposals. This guidance also supports prevailing NEPA principles. CEQ's Guidelines and earlier court decisions have established that NEPA requires reasonable forecasting and prediction of actions, impacts, and alternatives.[28] This does not mean that agencies must look into crystal balls,[29] but neither does it mean that agencies can avoid NEPA responsibilities by labeling discussions of future projects or impacts as "crystal ball inquiry."[30] In sum, a rule of reason pervades the Act's application to predictive analysis.

One question raised by the footnote is whether the Court has shortened how far agencies must look ahead in a comprehensive EIS. Distinguishing between a "contemplated" federal action (which need not be covered in a comprehensive EIS according to the Court) and a "proposed" action (which must be) is not a simple or clearcut task. Squarely addressing this task raises a host of additional issues, including identifying the levels of responsibility where significant decisions are made in developing actions, determining when enough information is available to permit coherent analysis, determining how much uncertainty is appropriate to responsible decisionmaking, and others. But the Court's opinion does not address these other problems. It thus provides limited guidance for agencies to use in approaching the long recognized[31] and continually difficult question of determining the proper scope of a comprehensive EIS, and the considerations which should guide agencies' decisions on scope.

The Council believes that these considerations remain the most useful principles for defining the scope of comprehensive environmental statements:

(1) precedent-setting effect (what future actions may be significantly influenced by decisions to go forward on a present action or actions? What significant alternatives may be foreclosed or prejudiced?);

(2) interdependence (does a present action or actions depend significantly on future actions also going forward?)

(3) cumulation of impacts (will future actions have effects which may compound the effects of a present action or actions?)

(4) availability of information (is enough information available on the future actions and alternatives and their effects to permit a meaningful analysis?)

If future actions fall within any of the first three categories, they should be included within the scope of the comprehensive EIS to the extent information is available.

Other existing guidance -- in agencies' own procedures,[32] in CEQ's Guidelines[33] and other Council guidance,[34] and in the case law[35] -- rounds out these principles. The Council believes that these existing sources of guidance continue to provide a sound and stable basis for decisionmaking, consistent with the Supreme Court's opinion.

Third, in two other notes,[36] the Court indicated that in certain circumstances -- when approval of one proposal or action is independent of other proposed actions to be covered in a comprehensive impact statement -- the single action may proceed before the final comprehensive EIS is complete if an impact statement is prepared on the single action and its effects are analyzed cumulatively, along with the likely effects of the other actions, in the comprehensive statement.

The context for these notes was the Court of Appeals' injunction against approval of four mining plans (for which a regional EIS had been prepared), and the Sierra Club's argument that a single EIS was required for all coal-related actions on the Northern Great Plains. The Court relied on the District Court's findings that lease and mining plan approvals across the Northern Great Plains were not closely connected, and on the multiplicity of national, regional and local EISs which Interior had already prepared or was planning to prepare.

The Court said in general that individual lease or mining plan approvals might proceed if they were independent of other leases or mining plans to be covered in a comprehensive EIS, if the individual actions were the subjects of adequate EISs, and if their impacts were considered in the

comprehensive statement. In particular, the four plans covered in the Powder River Basin statement were unconnected to other plans in other areas across the Northern Great Plains, and the adequacy of this regional EIS was not challenged; the Court said the injunction against these approvals was therefore improper.

This three-part standard for interim action -- no significant interdependence between the individual action and the other actions to be covered in the comprehensive EIS, an adequate EIS for the interim action, and analysis of it in the comprehensive statement -- provides useful clarificaton in this previously murky area. It provides the opportunity for action to proceed before the comprehensive EIS is complete in appropriate circumstances without prejudicing future choices, and ensures feedback from the interim action into the comprehensive analysis.[37]

Fourth, the Court noted that §102(2)(C) imposes duties on officials prior to their making a "report or recommendation on a proposal" for action.[38] Justice Marshall underscored this duty in his concurring and dissenting opinion:

> ...[A]n early start on the statement is more than a procedural necessity. Early consideration of environmental consequences through production of an environmental impact statement is the whole point of NEPA, as the Court recognizes. The legislative history of NEPA demonstrates that '[b]y requiring an impact statement Congress intended to assure [environmental] considerations during the development of a proposal ...'(citation omitted) Compliance with this duty allows the decisionmaker to take environmental factors into account when he is making decisions, at a time when he has an open mind and is more likely to be receptive to such considerations. Thus, the final impact statement itself is but the 'tip of an iceberg, the visible evidence of an underlying planning and decisionmaking process that is usually unnoticed by the public.' (citation omitted). Slip. op., Marshall Concurrence and Dissent, at 34 (emphasis in original).

This underscoring of the need for early and continuous environmental analysis in agency organization and planning, coupled with the Court's invitation in Flint Ridge[39] that agencies consider rulemaking to implement other provisions of NEPA,[40] suggests that agencies which do not have regulations applying NEPA to their planning activities should take a hard look at this possibility. Agencies which have adopted a NEPA based planning approach have reported its benefits.[41] The Council stands ready to assist any agency interested in exploring this approach.

Finally, the Court addressed federal courts' roles in reviewing NEPA compliance. In a ruling that sparked dissent from two Justices, the Court disapproved the Court of Appeals' test for determining when courts could intervene to require

an EIS during the development of a federal proposal. The majority said the balancing test the Court used went beyond courts' authority to intervene in federal planning. It stated that agencies have a duty to study environmental factors and consult with other agencies during evolution of a proposal but that courts do not enter the process until an agency official makes a "report or recommendation" and a plaintiff challenges the absence or the adequacy of a final impact statement.[42]

The Court did not clarify, however, the meaning of "report or recommendation." The Court seemed to assume that federal planning and decisionmaking is a rational, ordered process which produces a tangible report before any significant decision is made on an action (much like a lawsuit). In practice, reports and recommendations are often made orally and in writing by officials at different levels during the course of developing a federal action. The Council believes that keying the "report or recommendation" by a "responsible federal official" to the first significant point of decision in the agency review process[43] is a usable approach that meets the purposes of NEPA and the requirements of the Supreme Court.

FLINT RIDGE

In the second case, the Supreme Court held in Flint Ridge Development Co. v. Scenic Rivers Assn.[44] that the EIS requirement of §102(2)(C) was inapplicable to HUD's receipt and review of property information statements filed by developers under the Interstate Land Sales Full Disclosure Act. Property statements become automatically effective 30 days after filing with HUD unless they are deficient on their face. If they are, HUD can suspend them until the deficiencies are corrected, but HUD has no substantive authority to approve or disapprove the developer's project. The Act is a disclosure law, and HUD's authority is limited to ensuring that developers' statements are complete and accurate.

The Court reasoned, based on CEQ reports,[45] that HUD could not prepare draft and final impact statements within thirty days, and ruled that HUD did not have authority to extend the thirty day period solely for the purpose of preparing and circulating impact statements. The Court's decision may exempt from the EIS requirement of §102(2)(C) other types of federal actions, where a statutory time limit makes EIS preparation impossible and agency approval authority is limited. Failure by the SEC to suspend registration statements filed under the 1933 Securities Act[46] is an

example of such an exemption; Department of Commerce approval of local government projects under the Public Works Employment Act may be another.[47]

At the same time, the Court pointed out that HUD had other duties under NEPA, and could require developers to submit a wide range of environmental information in property statements based on other sections of NEPA. This ruling serves to reaffirm that NEPA supplements the jurisdiction and authority of all agencies,[48] and that sections other than 102(2)(C) authorize agency regulations and other actions necessary to implement the Act to the fullest extent possible.

FOOTNOTES

1. 424 U.S.____, 44 U.S.L.W. 5104 (U.S. June 28, 1976).

2. "'The Northern Great Plains Region' identified in respondant's complaint encompasses portions of fourt states - Northeastern Wyoming, Eastern Montana, Western North Dakota and Western South Dakota." Slip Op., at 3.

3. Sierra Club v. Morton, No. 1182-73, Fdg. 25 (D.D.C., February 14, 1974).

4. Sierra Club v. Morton, 514 F.2d 856, 875, 878, (D.C. Cir. 1975).

5. Kleppe, Slip Op., at 7, 8. The Court went on to say that had the Interior Department contemplated regional action, its regional EIS would have been required when a responsible official made a report or recommendation on the proposal. Slip op., at 11-13.

6. Id., at 10-11.

7. Id., at 19.

8. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971); Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972) (Hanly II); Scientists' Inst. for Pub. Info., Inc. v. AEC, 481 F.2d 1079 (D.C. Cir. 1973) (SIPI).

9. Kleppe, Slip Op. at 7.

10. Id., at 16-17.

11. Id., at 7.

12. Id., at 21-22.

13. Aberdeen & Rockfish R. Co. v. SCRAP, 422 U.S. 289 (1973).

14. See Swain v. Brinegar, ___ F.2d ___, 9 ERC 1086, 1088-90 (7th Cir. 1976), and cases cited.

15. E.g., SIPI, supra n.8.

16. E.g., NRDC v. NRC, ___ F.2d ___, 8 ERC 2065 (2d Cir. 1976).

17. CEQ Guidelines, 40 C.F.R. 1500.6(a) (1975); e.g., SIPI, supra n. 8; Jones v. Lynn, 477 F.2d 885 (1st Cir. 1973); City of Davis v. Coleman, 521 F. 2d 661 (9th Cir. 1975); NRDC v. Callaway, 524 F.2d 79 (2d Cir. 1975); Indian Lookout Alliance v. Volpe, 484 F.2d 11 (8th Cir. 1973); Atcheson, Topeka and Santa Fe R. Co. v. Callaway, 382 F. Supp. 610 (D.D.C. 1974).

18. Kleppe, Slip Op., at 17.

19. See cases cited at n. 17, supra, nn. 23-24, infra.

20. E.g., Indian Lookout Alliance v. Volpe , supra n. 17.

21. E.g., Atcheson, Topeka & Santa Fe R. Co. v. Callaway, supra n. 17.

22. E.g., Jones v. Lynn, supra n. 17.

23. Swain v. Brinegar, supra n. 14.

24. See, e.g., Sierra Club v. AEC, No. 1867-73, 6 ERC 1980 (D.D.C. Aug. 3, 1974).

25. Cf. Sierra Club v. Callaway, 499 F. 2d 982 (5th Cir. 1974); Sierra Club v. Stamm, 507 F. 2d 788 (10th Cir. 1974); Trout Unlimited v. Morton, 509 F.2d 1276 (9th Cir. 1974).

26. E.g., components of the Bonneville Unit involved in Sierra Club v. Stamm, supra n. 25.

27. Kleppe, Slip Op. at 17 n. 20.

28. 40 C.F.R. §1500.6(d) (1975); NRDC v. Morton, 458 F.2d 827, 837-38 (D.DC. Cir. 1972); SIPI, supra n. 8, 481 F.2d at 1091-92.

29. NRDC v. Morton, supra n. 28, 458 F.2d at 837-38.

30. SIPI, supra n. 8, 481 F.2d at 1092.

31. See CEQ Guidelines, 40 C.F.R. §1500.6(d) (1975); CEQ Memorandum on Procedures for Improving Environmental Impact Statements, 3 E.R.-Cur. Dev'ts. 82, 87 (1972); Indian Lookout Alliance, supra n. 17, 484 F.2d at 14-17; SIPI, supra n. 8, 481 F.2d at 1093-1098; Silva v. Romney, 473 F.2d 287, 290-92 (1st Cir. 1973).

32. See, e.g., Forest Service Guidelines for Preparation of Environmental Statements, 39 Fed. Reg. 38244 (1974).

33. 40 C.F.R. §1500.6 (1975).

34. CEQ, Environmental Impacts Statements: An Analysis of Six Years Experience By 70 Federal Agencies, 12-16 (1976); CEQ, Environmental Quality - 1975, 640-46 (1976); CEQ, Memorandum on Improving Impact Statements, supra n. 31.

35. E.g., Jones v. Lynn, supra n. 17, 477 F.2d at 890-91; NRDC v. Callaway, 524 F.2d 79, 87-90 (2d Cir. 1974); Named Individual Members of San Antonio Conservation Society v. Texas Highway Dept., 446 F.2d 1013, 1022-25 (5th Cir. 1971); Sierra Club v. Callaway, supra n.25, 499 F.2d at 986-990; Indian Lookout Alliance, supra n. 17, 484 F.2d at 14-20; Swain v. Brinegar, supra n. 14, 9 ERC at 1088-90.

36. Kleppe, Slip Op. at 15 n. 16, 22 n. 26.

37. In NRDC v. NRC, Nos. 75-4276, 75-4278, 8 ERC 2065 (2d Cir. May 26, 1976), reh. den., Nos. 963, 1051 (2d Cir. Sept. 8, 1976), the court applied the Kleppe rule on interim action and reaffirmed an earlier injunction against interim licensing by the NRC of facilities to reprocess spent nuclear fuel and of transporting and using mixed oxide (mox) fuel in nuclear reactors. The court's initial decision (which preceded Kleppe by about a month) was based on the court's finding that interim licensing of reprocessing and mox fuel use could severely prejudice the NRC's generic decision on whether or not to authorize wide-scale spent fuel reprocessing, and could effectively foreclose alternative methods for safeguarding this sensitive technology. In reaffirming this decision, the court contrasted the lack of connection among mining leases and plans across the Northern Great Plains with the close tie-in between interim licensing and anticipated wide-scale reprocessing. This recent decision, the first to apply Kleppe's interim licensing rule, confirms the need for interim action to have independent utility and substantial independence from the actions and alternatives covered in a comprehensive statement before it can proceed.

38 Kleppe, Slip Op. at 13, n. 15.

39. Flint Ridge Development Co. v. Scenic Rivers Assn., 424 U.S. ___, 44 U.S.L.W. 4954 (U.S., June 24, 1976).

40. Id., Slip Op. at 15-16.

41. The Forest Service, for example, revised its multiple use and land use planning system to merge it with the requirements of NEPA. See CEQ, Environmental Quality - 1974 387-381 (1974).

42. Kleppe, Slip Op. at 13 n. 15.

43. 40 C.F.R. §1500.7(a) (1975); Calvert Cliffs' Coordinating Committee v. AEC, 449 F.2d 1109 (1971).

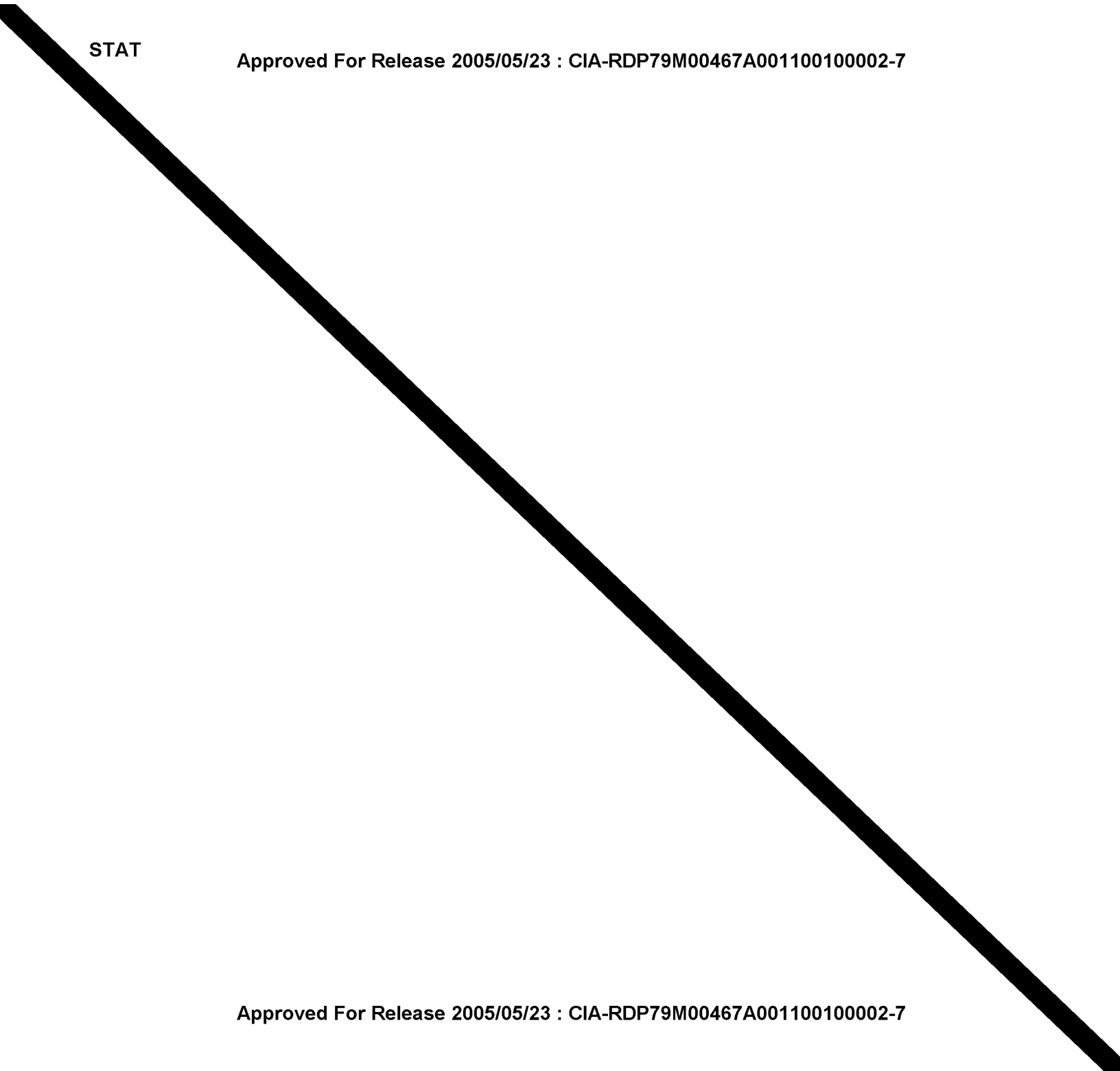
44. 424 U.S. ___, 44 U.S.L.W. 4954 (U.S. June 24, 1974).

45. Slip Op. at 12 n. 10.

46. 15 U.S.C. 77a et seq.

47. P.L. 94-369, 90 Stat. 999.

48. See, e.g., NEPA §105; Zabel v. Tabb, 430 F.2d 199 (5th Cir. 1970), cert. den., 401 U.S. 910 (1971); NRDC v. SEC, 389 F. Supp. 689 (D.D.C. 1974); EDF v. Matthews, ___ F. Supp. ___, 8 ERC 1877 (D.D.C. 1976).



CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

15
12 Feb '76

16 MAR 1976

Miss Bonnie E. Austin
Associate Planner
North Dakota State Planning Division
State Capitol - Fourth Floor
Bismarck, North Dakota 58505

Dear Miss Austin:

Your letter to the Director, dated 12 February 1976, has been referred to me for a response. Your letter requires 17 copies of any environmental impact statements that might be forwarded to the North Dakota Natural Resources Council for review. No particular problem is foreseen in providing this many copies should the occasion arise; however, you should be aware that CIA has few activities that impact upon the environment with the exception of minor facilities projects which are normally handled through the General Services Administration.

No activities are currently contemplated for the North Dakota area; however, should any such activities arise, your Office will be contacted immediately. Please contact me if further information is required.

Sincerely yours,

/s/ Michael J. Malanick
Michael J. Malanick
Director of Logistics

cc: ER
DDA

E-15

	UNCLASSIFIED		CONFIDENTIAL		SECRET

DDA

EXECUTIVE SECRETARIAT

Routing Slip

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Remarks:

D/Log. - Please prepare appropriate response !!

STAT

DDA Distribution:
Orig - D/Log
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Executive Secretary

Date

3637 (1-75)

(5 Mar 76)

DD 6 [redacted] 1191

TRANSMITTAL SLIP	DAT

TO: Mr. Evans

ROOM NO.	BUILDING

REMARKS:
ER does not have a copy of the OMB circular A-95, but could get a copy if you find it necessary for reference.

FROM: ER/Jim

ROOM NO.	BUILDING	EXTENSION

FORM NO. 241 REPLACES FORM 36-8 WHICH MAY BE USED. (47)

	UNCLASSIFIED		CONFIDENTIAL		SECRET

EXECUTIVE SECRETARIAT

Routing Slip

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Remarks:

STAT

Executive Secretary

_____ Date

3637 (1-73)

Executive Registry
76-1304

NORTH DAKOTA STATE PLANNING DIVISION

STATE CAPITOL—FOURTH FLOOR—BISMARCK, NORTH DAKOTA 58505
701 224-2818

X Ref
76-923-E-15

February 12, 1976

Mr. W. E. Colby, Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Colby:

RE: Draft and Final Environmental Impact Statement Review

In compliance with Office of Management and Budget Circular A-95 (Revised, January 13, 1976), it is a clearinghouse function to circulate and review environmental impact statements. The North Dakota State Planning Division operates the State Intergovernmental Clearinghouse and therefore coordinates the review and comment on draft and final environmental impact statements.

In order to reduce review time, and to insure adequate copies for review by the North Dakota Natural Resources Council, in the distribution plans for environmental impact statements, please plan to forward at least 17 copies to the State Planning Division which will then forward the statements to reviewing agencies, and return the responses received to the originating agency. The State Planning Division reserves the right to request further copies, as may be needed for review purposes.

If this method is not acceptable to your agency, the alternative would be that your agency contact the State Planning Division to work out a mutually acceptable mailing list prior to distribution of the statements, in order to eliminate duplication mailings.

Please give me some indication regarding how acceptable the above request is to your agency, and how it will fit into your agency procedures.

Your cooperation in reducing the complication of the EIS review process is appreciated. Your response will be shared with the Natural Resources Council Chairman.

Sincerely yours,

Bonnie E. Austin

E-15

Miss Bonnie E. Austin
Associate Planner

BEA/ds

cc: Michael Hanrahan

	UNCLASSIFIED		CONFIDENTIAL		SECRET

EXECUTIVE SECRETARIAT

Routing Slip

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Remarks:

STAT

D/ Executive Secretary

3/2/76
Date

3637 (1-75)

E-15

The Library of Congress

Congressional Research Service

Washington, D.C. 20540

February 27, 1976

Mr. W.E. Colby, Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Colby:

Your assistance is requested in obtaining information for a survey the Congressional Research Service has been directed to carry out for the Subcommittee on Energy and Environment of the House Interior and Insular Affairs Committee. The subject of the survey is the environmental impact statement process; as part of the survey, we have been asked to identify the individuals in each agency that carry major responsibility for the environmental impact assessment process, with the title and grade level of their positions.

We would greatly appreciate your cooperation in providing the following information:

1) Please identify the official in your agency or department with final responsibility for the environmental impact statement process, and provide his or her title and executive level or grade level.

The purpose of this question is to identify the top management level, below the Secretary or Administrator himself, at which responsibility for the impact statement process is exercised.

(a) Estimate the approximate amount of his or her time spent on this process.

(2) Please identify the official in your agency or department with over-all working responsibility on a full-time basis for the impact statement process, and provide his title and grade level.

(a) Provide the number of professionals working directly under this official on the environmental impact statement process.

(b) What percentage of these professionals' time, roughly, is spent on EIS preparation; what percentage on EIS review?

Your cooperation in providing this information is greatly appreciated. It would be most helpful to the Committee if we could receive your response no later than March 19.

If you have any questions, please call me at 426-5873. Thank you very much.

Sincerely,

Susan R. Abbasi

Susan R. Abbasi
Analyst
Environment and Natural Resources
Policy Division

SRA:dap